

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Lezli Hall,)
Plaintiff,) CIVIL ACTION FILE NO.
v.) 1:11-cv-00092-TCB-AJB
Chase Home Finance, LLC, Finance)
America, Ocwen Federal Bank, and)
Mortgage Electronic Registration System,)
Defendants.)

**L I M I T E D O B J E C T I O N T O
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Pursuant to Federal Rule of Civil Procedure 72(b)(2), and Local Rule 72.1.B, Defendants Ocwen Loan Servicing, LLC, the successor in interest to Ocwen Federal Bank, Chase Home Finance, LLC, and Mortgage Electronic Registration System, Inc. (Collectively referred to as the "Defendants") and hereby file this Limited Objection to the Magistrate Judge's Report and Recommendation, dated March 22, 2011 (Dckt. 15), and state as follows:

On March 22, 2011, Magistrate Judge Alan G. Baverman issued a report and recommendation concluding that certain "apparent" and actual claims

raised against Defendants by Plaintiff should be dismissed. Specifically, Magistrate Judge Baverman found that all claims arising under the United States Constitution, Fair Credit Billing Act, Truth In Lending Act, and the UCC should be dismissed. (Dckt. 15, p. 38.) In addition, Magistrate Judge Baverman also found that: (1) Plaintiff failed to raise a claim under the FDCPA (Dckt. 15, p. 12); (2) Plaintiff's fraud claims, if any, should be dismissed (Dckt. 15, p. 18); and (3) Plaintiff's claims arising from Defendants' failure to turn over original loan documents were not cognizable under either Georgia law, FDCPA or RESPA (Dckt. 15, p. 23). In making his recommendation, Magistrate Judge Baverman also found that Plaintiff had utilized a boilerplate complaint and had not litigated in good faith. As a result, this Court found that the District Court should not provide Plaintiff with an opportunity to amend.

However, Magistrate Judge Baverman did not explicitly recommend that this Complaint be dismissed in its entirety against Defendants and the action be terminated. This poses a quandary for Defendants. Every conceivable claim against Defendants has been found to be subject to dismissal. Despite this, the Report and Recommendation does not recommend that the Complaint be dismissed in its entirety and the action terminated. If this Report and Recommendation is adopted without addressing this issue, Defendants technically will remain parties to

an outstanding lawsuit, albeit one with no cognizable claims. This may require Defendants to file further motions to resolve this matter. In addition, Defendants may be placed in the position of having to file an answer to a complaint in which there were no claims remaining. To further the interests of judicial economy, Defendants respectfully requests that this Court clarify that the Complaint is dismissed in its entirety, judgment in favor of Defendants is to be entered, and the action is to be terminated by the Clerk of Court.

Accordingly, Defendants respectfully request that the Court adopt the Magistrate Judge's Report and Recommendation in part, but order that Plaintiff's Complaint is dismissed in its entirety, judgment is entered in Defendants' favor, and the action is terminated.

This 6th day of April 2011.

<u>/S/ Jonathan E. Green</u> Linda S. Finley Georgia Bar No. 261515 Jonathan E. Green Georgia Bar No. 307053 <i>Attorneys for Ocwen Loan Servicing, LLC, the successor in interest to Ocwen Federal Bank</i> Baker, Donelson, Bearman, Caldwell & Berkowitz, PC	<u>/S/ Shanon J. McGinnis</u> Shanon J. McGinnis Georgia Bar No. 387598 Lindsay A. Warren Georgia Bar No. 164735 <i>Attorneys for Chase Home Finance, LLC and Mortgage Electronic Registration System, Inc.</i> Wargo & French LLP 1170 Peachtree Street NE Suite 2020
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I certify use of 14 pt. Times New Roman font in accordance with the Local Rules of this Court, including LR 5.1B, NDGa.

/S/ Jonathan E. Green

Linda S. Finley
Georgia Bar No. 261515
Jonathan E. Green
Georgia Bar No. 307053
*Attorneys for Ocwen Loan Servicing,
LLC, the successor in interest to
Ocwen Federal Bank*

CERTIFICATE OF SERVICE

I have this day served upon all necessary parties of record with a copy of **LIMITED OBJECTION TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION** by the ECF online filing system with the U.S. District Court for the Northern District of Georgia and by mailing by First Class U.S. Mail with adequate postage affixed thereon to the following:

Lezli D. Hall
P.O. Box 465029
Lawrenceville, Georgia 30042

This 6th day of April 2011.

/S/ Jonathan E. Green
Jonathan E. Green
Georgia Bar No. 307053
*Attorneys for Ocwen Loan Servicing, LLC,
the successor in interest to
Ocwen Federal Bank*

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